

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 289 of 1998

in

SPECIAL CIVIL APPLICATION No 12170 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

B R ACHARYA

Versus

DIRECTOR

Appearance:

MR RD RAVAL for Appellant

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 27/04/98

ORAL JUDGEMENT

Admitted. Mr.S.T.Mehta, A.G.P. appears and waives service of notice of admission on behalf of the respondents. In the facts and circumstances of the case the matter is taken up for final hearing to day.

This appeal is filed against the judgment and order passed by the learned Single Judge in Special Civil Application No. 12170 of 1993 decided on 16th February 1998. By the said order the petition was dismissed and rule was discharged. The petition was ordered to pay costs to respondent no.2 quantified at Rs.1500/-.

It is contended by the learned counsel for the appellant that the issue raised in the petition (Spl.C.A.No.12170 of 1993) was similar to one raised in Special Civil Application Nos. 7267 of 1992 in which rule was issued and it was pending for final hearing. The learned Single Judge, therefore, ought to have heard this petition alongwith that matter.

Our attention was also invited by the learned counsel for the appellant to an order passed on 27th April 1994 by the learned Single Judge in the present petition which reads as under:

"Rule to be heard with Spl.C.A.no.2739/94. In view of the fact that the petitioner is terminated which is under challenge in the petition referred to above, interim relief is not pressed for."

The attention of the court was also invited to the orders passed in Special Civil Application No. 2739 of 1994. Those orders read thus;

"Rule. To be heard with Spl.C.A.No.7267/92. Petitioner states that he is holding charge of nearly 700 files of his office since 1989 of his class II position and according to him, the charge is not taken from him. In reply to the show cause notice, the petitioner has not come out with any statement that he is still in continuous service or that it is not correct that he is absent from duty. In view of this state of affairs, interim relief refused. Dt.25.2.94.
Sd.S.M.Soni J."

"The matter has come up all of a sudden for final hearing. This matter was tagged with other matters which are yet to be admitted, where

interim relief prayer is being gone into. Obviously therefore when Rule is not made returnable and therefore the respondent, have not filed affidavit-in-reply. With a view to see that they get appropriate opportunity to do so time is granted upto 4.7.94. The matter be placed for final hearing on final hearing Board on 25.7.94.

Dt. 27.4.94. Sd.N.J.Pandya J."

It is not even the case of the learned Assistant Government Pleader that at any time the above orders were re-called by any court and the present petition was ordered to be heard separately. In these circumstances, in our opinion, all the matters ought to have been placed for final hearing together. Only on that short ground this appeal requires to be allowed and is accordingly allowed. The learned Single Judge will now hear the matter alongwith other petitions. We may state that we have not expressed any opinion on merits of the matter. LPA is accordingly allowed. The order passed by the learned Single Judge is set aside. No order as to costs.

Dt. 27.4.1998. (C.K.THAKKER J.)

(A.L.DAVE J.)